IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 3RD AUGUST 2006 / 12TH SRAVANA 1928

WP(C).No. 33858 of 2005(E)

PETITIONER:

N.G.SUKUMARAN NAIR,
AGED 49 YEARS, SON OF GOVINDAN NAIR,
DRIVER, KERALA STATE ROAD TRANSPORT CORPORATION,
MUVATTUPUUZHA, RESIDING AT NANAKUZHIYIL HOUSE,
RAMAMANGALAM.P.O.686 663, ERNAKULAM DISTRICT.

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY

RESPONDENTS:

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1. KERALA STATE ROAD TRANSPORT CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPURAM.

2. THE DISTRICT TRANSPORT OFFICER,
KERALA STATE ROAD TRANSPORT CORPORATION,
MUVATTUPUZHA.

BY S.C. SRI.SAJEEVKUMAR K. GOPAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

EXT.P1: TRUE COPY OF MEDICAL CERTIFICATE DT. 22/1/2003.

EXT.P2: TRUE COPY OF MEDICAL CERTIFICATE DT. 15/6/2004.

EXT.P3: TRUE COPY OF DISCHARGE SUMMARY DT. 22.1.2003.

EXT.P4: TRUE COPY OF DISABILITY CERTIFICATE DT. 31/8/2005.

EXT.P5: TRUE COPY OF MEMORANDUM

EXT.P6: DO. DT. 12/11/2004.

EXT.P7: TRUE COPY OF MEMO DT. 21/5/2005.

EXT.P8: TRUE COPY OF REPRESENTATION DT. 28/11/2005.

A.K. Basheer, J.

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W.P(C) No. 33858 of 2005-E

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Dated this the 3rd day of August, 2006.

J U D G M E N T

Is the Kerala State Road Transport Corporation justified in refusing to grant the protection and benefit available to the petitioner under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995?

2. A brief reference to the essential facts may be necessary to answer the above question.

3. Petitioner was initially appointed as a Reserve Driver in the Corporation in July 2000 on the advice made by the Kerala Public Service Commission. Later, in June 2001 he was absorbed in regular service as Driver, Second Grade.

4. On November 9, 2002 while the petitioner was driving the bus in the course of his duty, he suffered a cerebral stroke and became unconscious. He was removed to the hospital and was diagnosed to have suffered Right Temporal Lobar Hematoma which resulted in paralysis of the left side of his body. His left hand and leg became immobile. Petitioner was treated as an inpatient in the hospital for different spells on three occasions. Exts.P1 to P3 are true photo copies of the certificates and discharge summary issued from Amritha Institute of Medical Sciences and Research Centre. Ext.P3 discharge certificate shows that petitioner was advised physio therapy to the limbs and

frequent monitoring and strict control of blood pressure. At the time of his discharge on January 22, 2003 his left upper limb was described as "spastic monoplegia". The Medical Board attached to the General Hospital, Ernakulam had issued Ext.P4 disability certificate assessing his disability at 60%. The Board certified that the petitioner was suffering from left sided hemiplegia. Ext.P4 certificate was issued on August 31, 2005.

5. It is not in dispute that the Corporation had engaged the petitioner on light duty on his return after partial recovery from his illness. Thus he was placed in the post of Vehicle Supervisor, which carried the same scale of pay and service benefits as that of Driver, for six months. Thereafter the petitioner was engaged as Pump Operator for a further period of six months with effect from May 21, 2005. Exts.P5 to P7 are orders issued by the Corporation in this regard.

6. But petitioner was not given any assignment on the expiry of the term of his engagement as Pump Operator on November 21, 2005. He has been treated as though on leave . He has not been paid any salary or service benefits since November 21, 2005. It is in the above circumstances that the petitioner has preferred this writ petition praying for issuance of a writ of mandamus or such other appropriate writ, or direction to the respondents "to accommodate the petitioner in the post of Vehicle Supervisor or any other post carrying the same pay scale and service benefits as that of Driver" . There is a further prayer to issue an appropriate

direction to the respondents to "keep the petitioner on a supernumerary post until he is shifted or accommodated to the post of Vehicle Supervisor or other suitable post. Petitioner also prays to issue appropriate orders to the respondents to treat the petitioner as on duty with effect from November 21, 2005 and pay him salary and allowances.

7. In the counter affidavit it is admitted that petitioner was not given any engagement after November 21, 2005. It is contended by the respondents that the request made by the petitioner to shift him to the post of Vehicle Supervisor cannot be allowed since the Public Service Commission and the Government have issued "strict direction" to discontinue with the practice of category change of employees. It is further contended that the Corporation has addressed the Government about the case of those employees who had become incapacitated due to terminal diseases or who suffered disability through accident while on duty. Government has been requested to allow the Corporation to accommodate such employees in lower posts through category change. The Corporation has also requested the Government to exempt it from the provisions of Section 47 of the Act.

8. It is not in dispute that the petitioner had suffered or acquired disability in the course of his service. Section 47 of the Act postulates that no establishment shall dispense with or reduce in rank an employee who acquires a disability during his service. However the employer will be entitled to shift the disabled

employee to some other post with the same pay scale and service benefits, if the employee is found to be not suitable for the post he was holding because of the disability suffered by him. It is further provided that the employee may be accommodated on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier, if it is not possible to adjust him against any post. Sub-section (2) of Section 47 further mandates that no promotion shall be denied to a person merely on the ground of his disability.

9. In **Kunal Singh** v. **Union of India (**AIR 2003 SC 1623) , the Supreme Court, while construing the provisions contained in the Act has held that the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Their Lordships further observed thus:

> "Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation,

whichever is earlier."

10. In **Union of India** v. **Sanjay Kumar Jain (**AIR 2004 SCW 4577) the Supreme Court held that if an establishment has not been exempted from the provisions of Section 47 of the Act, the benefits which accrued to an employee who suffered disability in the course of his service will have to be necessarily given the protection and benefit contemplated under the said provision. The statutory mandate cannot be denied to such a disabled employee.

11. It is the admitted position that the Corporation has not been exempted from the provisions contained in Section 47 of the Act. Even assuming that the Corporation had approached the Government with a request to exempt it from the purview of the above provisions, it is beyond controversy that the Government has not issued any notification as contemplated under the said statutory provision. Therefore the Corporation is not justified in denying the protection and benefits available t o the petitioner under Section 47 of the Act.

12. In the above facts and circumstances the action of the Corporation in keeping the petitioner off duty with effect from November 21, 2005 is per se illegal and arbitrary. The Corporation is bound to accommodate the petitioner in a suitable post carrying the same scale of pay and service benefits attached to the post of Driver which he had been holding. If no such post is available, petitioner has to be accommodated against a supernumerary post till a suitable post is available or till he superannuates.

13. Therefore the writ petition is allowed. The Corporation is directed to issue appropriate orders accommodating the petitioner in a suitable post. Petitioner shall be paid salary and service benefits with effect from November 21, 2005. The period during which petitioner was kept out of duty shall be reckoned as though he was on duty. Petitioner shall be given eligible promotions, if any, which became due. Appropriate orders in this regard shall be issued by the Corporation as expeditiously as possible at any rate within one month from the date of receipt of a copy of this judgment. The entire arrears of salary and other allowances shall also be disbursed to the petitioner within the time stipulated above.

A.K. Basheer
Judge.

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